

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

UNITED STATES OF AMERICA : Criminal Action No.

v. : PWG 15-296

ROLANDO ONEAL THORPE, : Greenbelt, Maryland

Defendant. : November 28, 2016
_____/ 1:00 P.M.

APPEARANCES:

FOR THE GOVERNMENT: DEBORAH A. JOHNSTON, ESQUIRE
MENAKA KALASKAR, ESQUIRE
Office of the United States Attorney
6406 Ivy Lane, 8th Floor
Greenbelt, Maryland 20770
301-344-4433

FOR THE DEFENDANT: DWIGHT E. CRAWLEY, ESQUIRE
Law Office of Dwight E. Crawley
1300 "I" Street NW, Suite 400E
Washington, DC 20005
202-580-9794

OFFICIAL COURT REPORTER: LINDA C. MARSHALL, (301) 344-3229

COMPUTER-AIDED TRANSCRIPTION OF STENOTYPE NOTES

P-R-O-C-E-E-D-I-N-G-S

2 MS. JOHNSTON: Your Honor, we're here in the matter of
3 United States of America versus Rolando Thorpe, Case Number
4 PWG 15-296.

5 I'm Deborah Johnston along with my co-counsel Menaka
6 Kalaskar, and our Case Agent Stacy Brown with ATF.

7 THE COURT: Thank you very much.

8 And, Mr. Crawley, you're here on behalf of Mr. Thorpe?

9 MR. CRAWLEY: Yes, sir, Your Honor.

10 THE COURT: Have you had an opportunity, sir, to go
11 over the Presentence Report with Mr. Thorpe?

12 MR. CRAWLEY: Yes, sir, Your Honor.

13 THE COURT: All right. And, sir, you've had a chance
14 to speak with your lawyer about the Presentence Report?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Thank you very much.

17 To recap where things stand, we were here in court
18 last on August 29, 2016, at which time Mr. Thorpe represented by
19 counsel entered a plea of guilty to two counts in the current
20 Indictment.

21 Count Two charged him with possession with intent to
22 distribute controlled substances in violation of 21 U.S. Code
23 841(b)1(B) for which the maximum period of imprisonment was five
24 years, a fine not to exceed \$250,000, a period of supervised
25 release of at least two years and a \$100 special assessment.

1 Count Four charged him with possession of a firearm in
2 furtherance of a drug trafficking offense in violation of
3 18 U.S. Code 924(c), which has a statutory mandatory minimum
4 sentence of five years to a maximum of life imprisonment, a fine
5 not to exceed \$250,000, supervised release of not more than five
6 years and a \$100 special assessment.

7 The plea was a plea pursuant to Federal Rule of
8 Criminal Procedure 11(c)(1)(C) and at that time I provisionally
9 agreed to adhere to the recommended sentence that was jointly
10 recommended as part of the Plea Agreement subject to my ability
11 to review the Presentence Report and determine at that time
12 whether or not I would unconditionally be bound by the
13 recommendation. And if I had elected not to, I would afford the
14 United States and the defendant to withdraw from the plea.

15 Having now received the Presentence Report, I will
16 confirm that I will be -- I will unconditionally agree to be
17 bound by the jointly recommended sentence.

18 The Presentence Report was prepared October 25th, 2016
19 with no objections to it. I will turn to the calculation of the
20 guidelines, but before doing so the Court will adopt the factual
21 findings of the Presentence Report as those of the Court and the
22 two counts do not group.

23 As for Count Two, possession with intent to distribute
24 controlled substances, the base offense level based upon the
25 drug quantity was 24. There are no other enhancements to the

1 offense level. Two points are reduced -- two levels are reduced
2 pursuant to Section 3E1.1A for acceptance of responsibility;
3 plus another 3E1.1B for having promptly made the determination
4 to plead guilty, and thereby relieving the government from the
5 requirement to prove the charges. That results for Count Two
6 with a amended offense level of 21.

7 Count Four is possession of a firearm in furtherance
8 of a drug trafficking offense and the guidelines there are the
9 mandatory minimum of at least five years.

10 Now, the criminal history of the defendant is set
11 forth beginning at page 7 and list the following offenses for
12 which points were calculated:

13 A 2007, October 9, 2007 sentence of 78 days involved
14 in a trespass of private property offense, which resulted in two
15 points;

16 A December 1st, 2004 sentence of three years
17 incarceration to a CDS charge that resulted in three points;

18 A 2006, January 18, 2006 sentence of 180 days for
19 simple assault resulting in two points;

20 Page 9, paragraph 35, an attempted possession of
21 controlled substance conviction resulting in one point.

22 Sentence imposed on July 16, 2009;

23 Paragraph 37, page 10, three points, possession of a
24 firearm during a drug-trafficking offense for which sentence was
25 imposed on May 1st, 2014. Three points for that;

1 A June 6th -- excuse me. A February 10th, 2015
2 sentence of two and-a-half years incarceration for a controlled
3 substance offense, which resulted in three points.

4 The total criminal convictions have a criminal history
5 score of 15 resulting in a criminal history category of Roman
6 Numeral VI for Count Two.

7 Now, if you go to criminal history category 21 --
8 pardon me. If you go to offense level 21, criminal history
9 category VI, the resulting guidelines range is 77 to 96 months.
10 Yet, the statutory maximum for Count Two is 60 months by
11 operation of the guidelines and operation of law. Then the
12 guidelines range becomes 60 months to 96 months.

13 Because the lower end of the guidelines of 60 months
14 is also the statutory maximum, the guidelines for Count Two
15 become 60 months. The guidelines for Count Four would be 60
16 months consecutive to the sentence to Count Two, and it is that
17 calculation, the 60 months for Count Two, plus the 60 months
18 consecutive for Count Four that result in the total collective
19 recommended sentence of 120 months of incarceration.

20 The guidelines provision for Count Two would also
21 include supervised release of more -- no less than two years
22 supervised release, a fine between \$7500 and \$75,000, and a \$100
23 special assessment. The fine and the special assessment would
24 be the identical amount for Count Four and the supervised
25 release for Count Four would be --

1 Give me one second here.

2 -- five years of supervised release, I believe. Let
3 me just check.

4 (Pause.)

5 THE COURT: Two to five years would be the guidelines
6 recommendation for Count Four.

7 So those are my guidelines calculations. Does the
8 United States wish to be heard on guidelines calculations?

9 MS. JOHNSTON: No, your Honor.

10 THE COURT: Mr. Crawley, sir?

11 MR. CRAWLEY: Your Honor, just briefly. I bumped into
12 Mr. McKenna last week at the D.C. jail, essentially CTF and he
13 had previously represented Mr. Thorpe. He had indicated to me
14 that he thought he could have gotten some of those earlier
15 charges changed at which time I discussed with him that in
16 speaking with the government and understanding this case, I
17 didn't think that would change the terms of the Plea Agreement
18 because there were other factors involved.

19 I did share with Mr. Thorpe my conversation with
20 Mr. McKenna today. I think Mr. Thorpe is still prepared to go
21 forward, but I just wanted that information made aware to the
22 Court. I don't think it would have had drastically changed the
23 guidelines, but just so the Court understands that that was a
24 conversation I had between myself and Mr. McKenna, and
25 Mr. Thorpe has been made aware of it.

1 THE COURT: Okay. Thank you, sir.

2 Does the government have anything to say about that?

3 MS. JOHNSTON: Only that regardless of what those
4 earlier convictions were, our plea offer in this case would be
5 no different than what we extended in this case. And I note
6 that probation did an adequate job. They didn't come across
7 anything in the record that indicates the charges were either
8 set aside or --

9 THE COURT: Yeah, I didn't see anything in there
10 either and I always check to make sure that there's counsel's
11 representation. So it didn't look like there was anything
12 missing either, so I think the record is sufficiently preserved
13 for that issue.

14 All right. No victims that need to be heard from, is
15 that right?

16 MS. JOHNSTON: That's right.

17 THE COURT: I'm happy to hear the government's
18 presentation on sentencing, ma'am.

19 MS. JOHNSTON: Thank you, Your Honor. I will be brief
20 because this is a Rule 11(c), but I did file with the Court a
21 Consent Order of Forfeiture and ask the Court to sign that and
22 include that in the judgment. If the Court doesn't have a copy
23 --

24 THE COURT: I think I already signed it. Let me just
25 verify that. I have it here.

1 Yes, I have signed that.

2 MS. JOHNSTON: Your Honor, we are going to ask the
3 Court to impose the sentence of ten years as set forth in the
4 Rule 11(c) plea.

5 As the Court can see from the defendant's record, it
6 is extensive. He spent a whole decade of his 20 years dealing
7 in marijuana and also had possession of firearms on at least one
8 other occasion.

9 We believe that a sentence of ten years is
10 appropriate, that it adequately reflects the seriousness of the
11 offense and that it will provide sufficient opportunity for
12 Mr. Thorpe to be rehabilitated within the Bureau of Prisons.
13 Perhaps, learn some skills he can use to support himself when he
14 is released.

15 We also ask because of the nature of these offenses
16 that the Court impose a five year period of supervised release
17 on Count Four of the Indictment. We think that extensive
18 supervision is necessary in this case given the defendant's
19 extensive criminal history. He could, of course, always
20 petition the Court if he does well to have that terminated early
21 and those would be our recommendations.

22 THE COURT: There's no restitution and no forfeiture
23 sought as part of the agreement? Did I miss something there?

24 MS. JOHNSTON: The forfeiture that was presented to
25 the Court --

1 THE COURT: I didn't hear forfeiture, just
2 restitution.

3 MS. JOHNSTON: Yes, forfeiture actually presented to
4 the Court was only for money actually seized and the firearms
5 and firearms equipment that was seized. We're not seeking a
6 money judgment at this time.

7 THE COURT: All right. So that has already been
8 signed. Thank you very much.

9 Mr. Crawley, sir, happy to hear from you.

10 MR. CRAWLEY: Briefly, Your Honor. In support of the
11 recommendation by counsel for Mr. Thorpe and counsel for the
12 government, we'd just like to highlight that during my working
13 with Mr. Thorpe, at all times he's been extremely forthright.
14 At no point did he try to deny or not accept responsibility for
15 his actions, Your Honor.

16 He understands that he is here before this Court
17 because of his actions and his actions alone. He made a choice
18 and it was a bad choice. And I think that's highlighted in the
19 Presentence Report.

20 He spoke highly of his mother. His mother is an
21 immigrant who came here and has worked very hard to support him
22 as well as his brother. He made bad choices. And I think
23 probation would agree with me that he was a pleasant person to
24 talk to, although he recognized the serious nature of the
25 charges against him. We would ask the Court to accept the

1 recommendation as well.

2 THE COURT: Thank you.

3 Does Mr. Thorpe wish to say anything before I impose
4 the sentence? He does not have to. No adverse inference will
5 be drawn against him if he chooses not to. But if he does wish
6 to say something, I'm happy to hear what he has to say.

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: All right. Thank you, sir.

9 Mr. Crawley, do you have a recommendation on location,
10 sir?

11 MR. CRAWLEY: Farrington --

12 THE COURT: Farrington?

13 MR. CRAWLEY: Yes, Your Honor. And as much as the
14 Court can, I know that the RDAP Program is something that's
15 difficult to get in in many instances --

16 THE COURT: Yeah, I will recommend whatever drug
17 treatment programs are available that he be -- and I'll also
18 recommend vocational educational as well.

19 MR. CRAWLEY: Thank you.

20 THE COURT: I don't know what's available, but to the
21 extent that any recommendation helps him out, I think it's a
22 good step, so I'll make it and make note of that.

23 MR. CRAWLEY: Thank you, Your Honor.

24 THE COURT: Could I get counsel please to approach for
25 a moment?

1 MS. JOHNSTON: Certainly.

2 THE COURT: Is that headset working?

3 Thank you, sir.

4 (Bench conference.)

5 It is the policy of this court that every guilty plea
6 and sentencing proceeding include a bench conference concerning
7 whether the defendant is or is not cooperating.

8 (Open court.)

9 THE COURT: All right. Back on the record.

10 THE WITNESS: So, I appreciate the comments of counsel
11 for which I have given due consideration. The -- it seems to me
12 that the -- if we go back and take a look at the factors under
13 18 U.S.C. Section 3553(a), the facts of the underlying offense
14 are set forth in the Agreement and summarized succinctly at
15 paragraphs eight through ten on page 5 of the Presentence
16 Report.

17 It stems from a search and seizure warrant executed at
18 Mr. Thorpe's apartment in Largo, Maryland and the seizure of the
19 Ziploc bags containing over 5,200 grams of marijuana, a scale
20 with residue, packaging materials, almost -- a little bit more
21 than \$6400 in currency, a Glock .10 millimeter handgun and
22 another SN -- I guess that's the serial number of that
23 particular one. 27 round ammunition magazine that was loaded
24 with a certain amount of ammunition.

25 And the defendant, I think, consistent, Mr. Crawley,

1 with your statement was fairly candid with the officers when
2 they were there. Said that it was -- it was his, not the other
3 person who was there with him.

4 And if we look at the prior criminal history of
5 Mr. Thorpe's, we have at age 18, a trespass of property; that at
6 age 19, a drug-related offense; simple assault in 2005 at age
7 20; drug offense at 22; drug offense and firearms offense at 27;
8 drug offense at 28.

9 And so, I think there is some support for the notion
10 that Mr. Thorpe has been significantly involved in the drug
11 distribution. His arrests, which have much less weight in terms
12 of looking at history and characteristics of the defendant are
13 also consistent with the same kind of activity. If you look at
14 those significant numbers of arrests and other involvement with
15 the legal system all despite their outcome, but did not result
16 in a conviction cluster around the kind of activity that suggest
17 a longstanding participation in drug, drug sales.

18 So, the offense is a fairly clear offense that is
19 supported by the notion of possession with the intent to
20 distribute controlled substances, pretty straightforwardly
21 established by the results of the search and seizure warrant.

22 And I certainly can take notice of the concern that
23 Congress had in terms of the sentences for drug offenses and
24 note that this is a serious offense which results in the need to
25 protect the public and also to protect the community as part of

1 the sentence.

2 Mr. Thorpe was born in Jamaica and he did come to this
3 country with his mom. And it does suggest that she has been a
4 hard worker and tried to provide for him and for his other
5 family members.

6 The prior background history of the defendant as
7 reflected in the Presentence Report shows that he's -- does not
8 have any mental health issues. He began smoking marijuana at
9 the age of 12 and has had a ongoing affiliation with drug use
10 since then, particularly with that one.

11 He has his GED. Did not graduate from high school,
12 but does have his GED. And not a significant history of
13 employment in except some working in the Audio and Sound in
14 Landover, Maryland in 2013. Perhaps, also in 2008, 2011, but
15 other than that, seems like his primary means of support was
16 through the drug sales, which relate to the offenses which he's
17 been found guilty of here.

18 In looking at this, considering the need for
19 deterrence of Mr. Thorpe himself individually and also general
20 deterrence, the need to protect the public, the seriousness of
21 the offense, taking into consideration that the sentence should
22 provide some assistance for his not having had substantial
23 periods of gainful employment in legitimate jobs and to address
24 his drug use, it seems to me that the recommended sentence in
25 the joint recommendation of the Rule 11(c)1(C) plea makes a good

1 deal of sense.

2 I therefore sentence him to 60 months imprisonment on
3 Count Two followed by 60 months consecutively for Count Four,
4 for a total sentence of incarceration of 120 months with time
5 credited for the period of time that he has been detained in
6 this case as will be calculated by the Bureau of Prisons.

7 I will recommend that he be placed at FCI Farrington
8 and that he be enrolled in the RDAP Program or any other drug
9 treatment program they have available for which he qualifies as
10 well as vocational educational training so that when he does
11 come out, he will have the opportunity to have the foundation to
12 be able to get a new start that will allow him not to have to
13 appear back in court for sentencing at some future date.

14 I'm going to sentence him to two years of supervised
15 release following the completion of his period of imprisonment
16 for Count Two and have that run concurrent with a period of five
17 years supervised release for Count Four. So, that's a total of
18 five years concurrently; two years for Count Two, five years for
19 Count Four.

20 The conditions of probation will be those set forth at
21 page 23 of the Presentence Report. Namely, substance abuse and
22 treatment, vocational and educational program and \$100 special
23 assessment as directed by the probation officer.

24 The fine is waived. He does not have the ability to
25 pay it. Special assessment of \$100 should be paid as directed

1 by the Presentence Report. And the Forfeiture Agreement has
2 been signed and there is no request for a restitutionary order.
3 So that would be the sentence of this Court.

4 Are there outstanding charges to be dismissed at this
5 time?

6 MS. JOHNSTON: There are, Your Honor. Just to clear,
7 the Court is ruling \$100 per count?

8 THE COURT: Yes, thank you. That was very imprecise
9 of me. One hundred dollars per count for a total of \$200.

10 MS. JOHNSTON: And the government would move to
11 dismiss the remaining count of the Indictment pending against
12 Mr. Thorpe.

13 THE COURT: All right. That motion is granted.

14 Mr. Crawley, anything further from you, sir?

15 MR. CRAWLEY: No, Your Honor.

16 THE COURT: All right. Then at this point we'll stand
17 in recess.

18 Just let me tell you, Mr. Thorpe, if you believe there
19 is a basis for appealing this sentence, even though I believe
20 you have waived the ability to do so, you must file Notice of
21 Appeal within 14 days of the entry of the Judgment of Conviction
22 or within 14 days of the entry of appeal by the government
23 should they choose to appeal, but they have waived their ability
24 to appeal as well.

25 And if there is nothing further, we'll stand in

1 recess. I thank the court reporter and courtroom staff.

2 (Recess at 1:31 p.m.)

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1 CERTIFICATE OF COURT REPORTER

2 I, Linda C. Marshall, certify that the foregoing is a
3 correct transcript of the record of proceedings in the
4 above-entitled matter.5
6
7 /s/8

 Linda C. Marshall, RPR
9 Official Court Reporter
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